

ORIGINAL



0000107524

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

JAN - 5 2010

DOCKETED BY

*[Signature]*

2010 JAN - 5 P 3: 37

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

IN THE MATTER OF:

SIR MORTGAGE & FINANCE OF ARIZONA,  
INC., an Arizona corporation,

GREGORY M. SIR (a/k/a "GREG SIR"), and  
ERIN M. SIR, husband and wife,

Respondents.

DOCKET NO. S-20703A-09-0461

**SIXTH**  
**PROCEDURAL ORDER**  
**(Vacates Oral Argument and Hearing)**

**BY THE COMMISSION:**

On September 24, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and a Notice of Opportunity for Hearing ("Notice") against Sir Mortgage & Finance of Arizona, Inc. ("SMFA") and Gregory M. Sir and Erin M. Sir, husband and wife (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of notes, and/or investment contracts.

The Respondents were duly served with copies of the Notice.

On September 28, 2009, a request for hearing was filed on behalf of the Respondents.

On October 2, 2009, by Procedural Order, a pre-hearing conference was scheduled on October 28, 2009.

On October 23, 2009, Respondents filed their Answer and Motion to Vacate the T.O.

On October 26, 2009, the Division filed a response to Respondents' Motion to Vacate the T.O.

On October 28, 2009, the Division and Respondents appeared with counsel at the pre-hearing conference. The Division and counsel for the Respondents discussed the status of the proceeding and

1 the issues raised by the T.O. and Notice. Respondents requested a hearing for oral argument to be  
2 heard on their Motion to Vacate. It was agreed that the Division would file a supplement to its  
3 response by November 13, 2009, and Respondents would have until November 25, 2009, to file their  
4 reply. The parties further agreed that a hearing be scheduled to commence on February 1, 2010, with  
5 the parties to exchange copies of their Exhibits and Witness Lists at the beginning of January 2010.

6 On October 29, 2009, by Procedural Order, the parties were ordered to supplement their  
7 pleadings with respect to the Motion to Vacate the T.O. by November 13, 2009, as agreed and that  
8 oral argument take place on December 8, 2009, and a hearing commence on February 1, 2010, and  
9 the related exchange of documents occur on January 4, 2010.

10 On November 3, 2009, Respondents filed a supplement to their Motion to Vacate the T.O.

11 On November 4, 2009, Respondents filed a Request to Alter Schedules in Second Procedural  
12 Order, which ordered the parties to exchange copies of their Witness Lists and copies of their  
13 Exhibits by January 4, 2010. Respondents requested that the Division be ordered to provide their  
14 documents by November 30, 2009, and that Respondents be given until January 6, 2010, to provide  
15 their documents to the Division.

16 On November 6, 2009, Respondents filed their First Request for Production of Documents  
17 which requested that the Division provide the documents 20 days from the date of service of the  
18 request at the office of Respondents' attorney.

19 On November 12, 2009, the Division filed the following pleadings: Supplemental Response to  
20 Respondents' Motion to Vacate the T.O.; Response to Respondents' Supplement to Motion to Vacate  
21 and Request to Alter Schedules in Second Procedural Order and Motion for Motion Practice  
22 Scheduling Order; and Objection to Respondents' Request for Issuance of Administrative Subpoenas  
23 for Testimony and Documents.

24 On November 20, 2009, the Division filed Objection to and Motion to Quash Respondents'  
25 First Request for Production of Documents. In part this was due to the overly broad nature and the  
26 volume of the requested material. The Division points out the burdensome nature of Respondents'  
27 extensive request for documents.  
28

1 On November 24, 2009, Respondents filed Respondents' Reply to Securities Division's  
2 Response to Request to Alter Schedule in Second Procedural Order and Response to Motion for  
3 Motion Practice Scheduling Order.

4 On November 25, 2009, Respondents' filed Respondents' Reply to the Responses to Motion  
5 to Vacate Temporary Order and Supplement and Motion to Vacate Temporary Order.

6 On December 2, 2009, Respondents filed Respondents' Response to: (1) Securities Division's  
7 Objection to Motion to Quash First Request for Production of Documents and; (2) Securities  
8 Division's Objection to Respondents' Request for Issuance of Administrative Subpoenas for  
9 Testimony and Documents in which Respondents further argued their earlier stated positions and  
10 pointed out prior Commission Procedural Orders in favor of discovery. Respondents further  
11 indicated their willingness to resolve issues related to their request.

12 Subsequently, on December 2, 2009, by Procedural Order, oral argument on the Motion to  
13 Vacate the T.O. was scheduled for December 8, 2009. With respect to Respondents' request to alter  
14 the schedule for the exchange of documents as set forth in the Second Procedural Order, adjustments  
15 were ordered. It was further ordered that the subpoenas for depositions of the witnesses and  
16 production of their documents should not be quashed. With respect to the Respondents' request for  
17 the production of documents this request also was not quashed. Lastly, the Division's request for a  
18 motion deadline was ordered.

19 On December 7, 2009, Respondents and the Division filed a Joint Stipulation to Continue  
20 Oral Argument on Respondents' Motion to Vacate T.O. for at least two weeks.

21 On December 9, 2009, by Procedural Order, the oral argument was continued to December  
22 21, 2009.

23 On December 21, 2009, Respondents and the Division filed a Joint Stipulation to Continue  
24 Oral Argument on Respondent's Motion to Vacate T.O. to a later date.

25 On December 22, 2009, by Procedural Order, oral argument was continued from December  
26 21, 2009 to January 14, 2010. The remaining dates with respect to the hearing remained unchanged.

27 On January 4, 2010, the parties filed a Stipulation to Continue Pending Deadlines and Issues  
28

1 with respect to the following: oral argument; the evidentiary hearing; the provision of Respondents'  
2 copies of Exhibits and Witness List; and the Division's Motion for Reconsideration. The parties  
3 represented that a tentative settlement had been reached and that a proposed form of Consent Order  
4 would be submitted for Commission approval at its Open Meeting scheduled for February 18, 2010.  
5 The parties further request that a status conference be scheduled in early March 2010 in the event that  
6 the Consent Order is not approved at the Commission's Open Meeting.

7 Accordingly, the request of the parties as stipulated should be granted.

8 IT IS THEREFORE ORDERED that that **oral argument** on Respondents' Motion to Dismiss  
9 the T.O. **scheduled on January 14, 2010, is hereby vacated.**

10 IT IS FURTHER ORDERED that the **hearing** scheduled to commence on **February 1, 2010,**  
11 **and subsequent dates, is hereby vacated.**

12 IT IS FURTHER ORDERED that **the provision of copies of Respondents' Exhibits and**  
13 **Witness Lists,** with courtesy copies provided to the presiding Administrative Law Judge, **is hereby**  
14 **stayed** while a settlement is pending.

15 IT IS FURTHER ORDERED that **a status conference shall be held on March 4, 2010, at**  
16 **9:30 a.m.,** at the Commission's office, 1200 West Washington Street, Room 100, Phoenix Arizona,  
17 in the event a Consent Order is not approved by the Commission at its February 18, 2010, Open  
18 Meeting.

19 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized  
20 Communications) applies to this proceeding as the matter is now set for public hearing.

21 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance  
22 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
23 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances  
24 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
25 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
26 Administrative Law Judge or the Commission.

27 IT IS FURTHER ORDERED that any motions which are filed with the Commission in this  
28

1 matter and which are not ruled upon within 25 calendar days of the filing date of the motion shall be  
2 deemed denied.

3 IT IS FURTHER ORDERED that any responses to motions shall be filed within ten calendar  
4 days of the filing date of the motion.

5 IT IS FURTHER ORDERED that any replies to responses shall be filed within five calendar  
6 days of the filing date of the response.

7 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
8 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
9 *pro hac vice*.

10 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,  
11 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
12 ruling at hearing.

13 DATED this 5<sup>TH</sup> day of January, 2010.

14  
15  
16   
17 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

18 Copies of the foregoing mailed/delivered  
19 this 5<sup>th</sup> day of January, 2010 to:

20 Paul J. Roshka, Jr.  
21 Timothy J. Sabo  
22 ROSHKA, DEWULF & PATTEN, PLC  
400 East Van Buren, Suite 800  
Phoenix, AZ 85004  
Attorney for Respondents

23 Matt Neubert, Director  
24 Securities Division  
25 ARIZONA CORPORATION COMMISSION  
1300 West Washington Street  
Phoenix, AZ 85007

26 ARIZONA REPORTING SERVICE, INC.  
27 2200 North Central Avenue, Suite 502  
Phoenix, AZ 85004

28 By:

  
Debra Broyles  
Secretary to Marc E. Stern